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10 *Attorneys for Petitioning Creditors USA Capital Diversified Trust Deed Fund, LLC and*
11 *the USACM Liquidating Trust*

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re

15 JOSEPH D. MILANOWSKI,

17 Debtor.

Case No. BK-S-07-13162 LBR

Chapter 11

**DECLARATION OF JEFFERY D.
HERMANN IN SUPPORT OF
PETITIONING CREDITORS'
EMERGENCY (1) MOTION UNDER 11
U.S.C. §§ 303 (f) AND (g), 105 AND
1104(a) FOR AN ORDER APPOINTING
AN INTERIM TRUSTEE, AND (2) EX
PARTE MOTION FOR AN ORDER
IMMEDIATELY RESTRICTING THE
ALLEGED DEBTOR'S BUSINESS-
RELATED ACTIVITIES PENDING
APPOINTMENT OF AN INTERIM
TRUSTEE**

Hearing Date: OST PENDING

Hearing Time: OST PENDING

1 I, Jeffery D. Hermann, hereby declare, verify and state as follows:

2 1. I am over the age of 18, am mentally competent, have personal knowledge of the
3 facts that follow, and if called upon to testify thereto, I could and would do so under oath.

4 2. I am Of Counsel with Orrick, Herrington & Sutcliffe, LLP (“Orrick”), in Los
5 Angeles, California, and make this declaration in support of the Emergency Motion Under 11
6 U.S.C. §§ 303 (f) and (g), 105 and 1104(a) For an Order Appointing an Interim Trustee and an
7 Order Restricting the Alleged Debtor’s Operations Pending Appointment of an Interim Trustee
8 (the “Motion”), as counsel to Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC
9 (“Diversified”).

10 3. On the April 13, 2006 Petition Date, USA Capital Diversified Trust Deed Fund,
11 LLC and four related companies filed petitions for relief under chapter 11 of the Bankruptcy
12 code. Orrick was retained by the Official Committee of Equity Security Holders of USA Capital
13 Diversified Trust Deed Fund, LLC (“Diversified Committee”) on June 1, 2006 to perform legal
14 services for the Diversified Committee in the USA Cases.¹ On March 12, 2007, the Debtors’
15 Third Amended Plan of Reorganization (the “Plan”) became effective and in accordance with the
16 Plan, Michael Tucker became the Administrator of Post-Effective Date USA Capital Diversified
17 Trust Deed Fund, LLC (“Diversified”). Mr. Tucker subsequently retained Orrick as counsel to
18 Diversified.

19 4. On March 13, 2007, I attended the deposition of Joseph Milanowski at the law
20 offices of Gerrard Cox & Larsen, 2450 St. Rose Parkway, #200, Henderson, Nevada 89074, in
21 connection with the HMA Adversary. A true and correct copy of the transcript from the
22 deposition of Joseph Milanowski (the “Milanowski Deposition Transcript”) is attached hereto as
23 **Exhibit 1** and is incorporated herein by this reference.

24 5. On March 14, 2007, I attended the depositions of Thomas Hantges and Victoria S.
25 Loob also at the law offices of Gerrard Cox & Larsen in connection with the HMA Adversary. A
26 true and correct copy of the transcript from the deposition of Victoria S. Loob (the “Loob
27 Deposition Transcript”) is attached hereto as **Exhibit 2** and is incorporated herein by this

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¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed in the Motion.

1 reference. A true and correct copy of the transcript from the March 14, 2007 deposition of
2 Thomas Hantges (the “Hantges March Deposition Transcript”) is attached hereto as **Exhibit 3**
3 and is incorporated herein by this reference. Also attached hereto as **Exhibit 4** and incorporated
4 herein by this reference is the Amended Notice of Deposition of Thomas Hantges reflecting that
5 the Hantges Deposition was rescheduled for March 14, 2007, at 3:00 p.m. at the offices of
6 Gerrard Cox & Larsen.

7 6. On April 25, 2007, I conducted the deposition of Thomas Hantges at the law
8 offices of Diversified Nevada counsel, Beckley Singleton, Chartered, 530 Las Vegas Boulevard
9 South, Las Vegas, Nevada 89101, in connection with the USA Investors VI, LLC case. A true
10 and correct copy of the transcript from the April 25, 2007 deposition of Thomas Hantges (the
11 “Hantges April Deposition Transcript”) is attached hereto as **Exhibit 5** and is incorporated herein
12 by this reference.

13 7. Throughout the USA Cases, the many inquiries of USAIP made by the USA
14 Debtors were repeatedly met with refusals to answer on the grounds of Fifth Amendment
15 privilege. Mr. Milanowski testified, and therefore I am informed and believe that, while under the
16 control of Milanowski and Hantges, USAIP employed only three people, Milanowski, Hantges
17 and Victoria Loob.

18 8. Milanowski invoked his Fifth Amendment privilege 47 times during the deposition
19 taken in the HMA Adversary on March 13, 2007, choosing to answer only those questions that
20 provided information he considered to be favorable to Reale.² See Exhibit 1. Loob, in her
21 deposition taken in the HMA adversary, also invoked the Fifth Amendment, answering no
22 questions. See Exhibit 2.

23 9. Hantges did not initially invoke the Fifth Amendment, choosing instead to ignore a
24 deposition subpoena in the HMA Adversary and not show up at the designated time and place –
25 despite the fact that counsel for the parties in that adversary did appear. See Exhibit 3, Exhibit 4.

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² The 47 count does not include the instances where Milanowski referred to his earlier invocation of the
privilege in refusing to answer a new question.

